

REMARKS

The Applicant respectfully requests further examination and reconsideration in view of the remarks below. Previously, Claims 1-15 were pending in the application, and all were rejected. By the above amendment, Claims 10 and 15 are amended, Claim 11 is canceled, and Claim 16 is added. Thus, Claims 1-10, and 11-16 are currently pending.

Claim Rejections under 35 U.S.C. § 112, ¶ 1

Claims 1-15 were rejected under 35 U.S.C. §112 , first paragraph, as failing to comply with the enablement requirement. Specifically, it is stated that the “structural details of the adjusting means that permit the windshield position to be adjusted[,] ... the manual override switch[, and] the position detection circuit are not understood.” The Applicant respectfully traverses this rejection.

In the “Response to Arguments,” the Examiner states that “the specification must support [a claim to an invention in terms of its function(s)] by describing at least one embodiment detailing structure capable of effecting such functions.” Means plus function language is often used to claim an invention in terms of its function. In MPEP §2185, the issue of enablement for such claims is addressed.

The description of an apparatus with block diagrams describing the function, but not the structure, of the apparatus is not fatal under the enablement requirement of 35 U.S.C. 112, first paragraph, as long as the structure is conventional and can be determined without an undue amount of experimentation. In re Ghiron, 442 F.2d 985, 991, 169 USPQ 723, 727 (CCPA 1971);
The same section of the MPEP notes that means plus function language does not create any exception to the requirements of the first paragraph of §112. It follows from this point that the statement quoted above applies in generality to those requirements, regardless of the mode of claim interpretation being used.

Given the above, the only remaining recourse to sustain the §112 rejection is to show that the structures corresponding to the functions described within the instant specification are unconventional, or cannot be determined without an undue amount of experimentation. The Applicants assert that this is not the case.

To the contrary, the structures corresponding to the functional language used in Claims 1-15 are within the ken of one having ordinary skill in the art of electromechanical apparatus for use with motor vehicles.

Claim 1

Claim 1 recites “means for automatically adjusting a position of the windshield when a

speed of a vehicle crosses a predetermined threshold value.” According to the Office Action, the structural details of this adjusting means are not understood. The Applicant respectfully submits that the adjusting means of Claim 1 is supported by numerous portions of the specification. A specific embodiment of a control circuit including a three-input Boolean And gate is described. See page 2, lines 2-5. The control circuit is disclosed to receive electromagnetic signals from an electric device of the motorcycle. See page 4, lines 20-27, See Also page 5, line 1. See Also page 1, lines 23-25; page 2, lines 11-14; and page 3, lines 4-20. The specification discloses that the control system can control, for example, a raiser motor. See page 6, lines 13-23.

In view of the foregoing, the Applicant respectfully submit that the specification of the instant application sets forth a combination of structures capable of effecting “means for automatically adjusting” the windshield position. Further, the Applicant submits that the functions described with reference to the adjusting means are relatively conventional in the automotive art, e.g. servo motors controlled in response to electrical signals are used in power windows and windshield wipers. In addition, the Applicant submits that for one skilled in the art to apply such conventional adjusting means in the manner described and claimed within the instant specification would involve only routine experimentation. If the examiner disagrees, the Applicant requests that he point out in particular why the functions described are unconventional, and why the experimentation needed is abnormal in the art and thus undue.

For at least these reasons, Claim 1 is enabled by the specification and its rejection under §112, paragraph one should be removed.

Claim 6

Claim 6 depends from Claim 1 and recites “a manual override switch coupled to the helmet wherein the manual override switch overrides the means for automatically adjusting the position of the windshield so that a user can manually adjust the windshield to a desired position.” Within the Office Action, it is stated that “at least one construction of such a switch incorporated in the helmet and operative with the other elements of the helmet should be shown.” The Applicant respectfully submits such illustration is unnecessary if the function of the switch is conventional and apparent to one skilled in the art. See §MPEP 2185 (as discussed above). The structural arrangement of the switch 160 on the helmet is clearly shown, as is the interaction of the switch (540) with the control system 500. See page 5, lines 6-9 and 20-25.

In view of the foregoing, the Applicant respectfully submits that the specification of the instant application sets forth a combination of structures capable of effecting a “manual override switch” that overrides the means for automatically adjusting. Further, the Applicant submits that the functions described with reference to the override switch are relatively conventional in the automotive art, e.g. releasing the pawl, placing the raiser motor in neutral. In addition, the

Applicant submit that for one skilled in the art to apply such override mechanisms in the manner described and claimed within the instant specification would involve only routine experimentation. If the examiner disagrees, the Applicant requests that he point out in particular why the functions described are unconventional, and why the experimentation needed is abnormal in the art and thus undue.

For at least these reasons, Claim 6 is enabled by the specification and its rejection under §112, paragraph one should be removed.

Claim 7

Claim 7 recites “means for automatically adjusting a position of the windshield when a speed of the motorcycle crosses a predetermined threshold value.” According to the Office Action, the structural details of this adjusting means are not understood. The Applicant respectfully submits that the adjusting means of Claim 7 is supported by numerous portions of the specification. A specific embodiment of a control circuit including a three-input Boolean And gate is described. See page 2, lines 2-5. The control circuit is disclosed to receive electromagnetic signals from an electric device of the motorcycle. See page 4, lines 20-27, See Also page 5, line 1. See Also page 1, lines 23-25; page 2, lines 11-14; and page 3, lines 4-20. The specification discloses that the control system can control, for example, a raiser motor. See page 6, lines 13-23.

In view of the foregoing, the Applicant respectfully submits that the specification of the instant application sets forth a combination of structures capable of effecting “means for automatically adjusting” the windshield position. Further, the Applicant submits that the functions described with reference to the adjusting means are relatively conventional in the automotive art, e.g. servo motors controlled in response to electrical signals are used in power windows and windshield wipers. In addition, the Applicant submits that for one skilled in the art to apply such conventional adjusting means in the manner described and claimed within the instant specification would involve only routine experimentation. If the examiner disagrees, the Applicant requests that he point out in particular why the functions described are unconventional, and why the experimentation needed is abnormal in the art and thus undue.

For at least these reasons, Claim 7 is enabled by the specification and its rejection under §112, paragraph one should be removed.

Claim 10

Claim 10 does not include any limitation that was particularly pointed out as being non-enabled within the Office Action. The limitations referred to reside, if anywhere, within claims dependant from Claim 10. The Applicant submits that the rejection of Claim 10 under §112, paragraph one, should be removed.

Claim 12

Claim 12 depends from Claim 10 and recites “a manual override switch coupled to the helmet wherein the manual override switch overrides the means for automatically adjusting the position of the windshield so that a user can manually adjust the windshield to a desired position.” Within the Office Action, it is stated that “at least one construction of such a switch incorporated in the helmet and operative with the other elements of the helmet should be shown.” The Applicant respectfully submits such illustration is unnecessary if the function of the switch is conventional and apparent to one skilled in the art. See §MPEP 2185 (as discussed above). The structural arrangement of the switch 160 on the helmet is clearly shown, as is the interaction of the switch (540) with the control system 500. See page 5, lines 6-9 and 20-25.

In view of the foregoing, the Applicant respectfully submits that the specification of the instant application sets forth a combination of structures capable of effecting a “manual override switch” that overrides the means for automatically adjusting. Further, the Applicant submits that the functions described with reference to the override switch are relatively conventional in the automotive art, e.g. releasing the pawl, placing the raiser motor in neutral. In addition, the Applicant submits that for one skilled in the art to apply such override mechanisms in the manner described and claimed within the instant specification would involve only routine experimentation. If the examiner disagrees, the Applicant requests that he point out in particular why the functions described are unconventional, and why the experimentation needed is abnormal in the art and thus undue.

For at least these reasons, Claim 12 is enabled by the specification and its rejection under §112, paragraph one should be removed.

Claim 13

Claim 13 depends from Claim 10 and recites “a position detection circuit coupled to the control circuit for detecting the position of the windshield and sending a detection signal to the control circuit.” Within the Office Action, a question is posed: “how is the windshield position determined by such circuit” The Applicant respectfully submits that recitation of such specific structure is unnecessary if the function of the circuit is conventional and apparent to one skilled in the art. See §MPEP 2185 (as discussed above). The function and location of the position sensing circuit relative to other circuit elements is made clear by the discussion in the specification referring to FIG. 3. See page 5, lines 20-27, and page 6, lines 13-15.

In view of the foregoing, the Applicant respectfully submits that the specification of the instant application sets forth a sufficiently detailed discussion of the function of the position sensing circuit. Further, the Applicant submits that the functions described with reference to the circuit are relatively conventional in the automotive art, e.g. one-touch lowering or raising of

power windows, control of windshield wiper motors. In addition, the Applicant submits that for one skilled in the art to apply such position sensing circuitry in the manner described and claimed within the instant specification would involve only routine experimentation. If the examiner disagrees, the Applicant requests that he point out in particular why the functions described are unconventional, and why the experimentation needed is abnormal in the art and thus undue.

For at least these reasons, Claim 13 is enabled by the specification and its rejection under §112, paragraph one should be removed.

Claim 14

Claim 14 recites “means for automatically adjusting a position of the windshield when the speed of the motorcycle crosses a predetermined threshold value.” According to the Office Action, the structural details of this adjusting means are not understood. The Applicant respectfully submits that the adjusting means of Claim 14 is supported by numerous portions of the specification. A specific embodiment of a control circuit including a three-input Boolean And gate is described. See page 2, lines 2-5. The control circuit is disclosed to receive electromagnetic signals from an electric device of the motorcycle. See page 4, lines 20-27, See Also page 5, line 1. See Also page 1, lines 23-25; page 2, lines 11-14; and page 3, lines 4-20. The specification discloses that the control system can control, for example, a raiser motor. See page 6, lines 13-23.

In view of the foregoing, the Applicant respectfully submits that the specification of the instant application sets forth a combination of structures capable of effecting “means for automatically adjusting” the windshield position. Further, the Applicant submits that the functions described with reference to the adjusting means are relatively conventional in the automotive art, e.g. servo motors controlled in response to electrical signals are used in power windows and windshield wipers. In addition, the Applicant submits that for one skilled in the art to apply such conventional adjusting means in the manner described and claimed within the instant specification would involve only routine experimentation. If the examiner disagrees, the Applicant requests that he point out in particular why the functions described are unconventional, and why the experimentation needed is abnormal in the art and thus undue.

For at least these reasons, Claim 14 is enabled by the specification and its rejection under §112, paragraph one should be removed.

Claim 15

Claim 15 does not include any limitation that was particularly pointed out as being non-enabled within the Office Action. The limitations referred to reside, if anywhere, within claims dependant from Claim 10. The Applicant submits that the rejection of Claim 15 under §112,

paragraph one, should be removed.

Accordingly, the Applicant respectfully submits that the specification in the present application contains numerous descriptions of the matter recited in Claims 1-15. In view of the foregoing, the Applicant respectfully requests reconsideration and withdrawal of the §112, first paragraph, rejection of Claims 1-15.

Rejection of Claims 1-12, 14, and 15 under 35 U.S.C. § 102(b)

Claims 1-12, 14, and 15 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Canadian patent CA 2,124,780 A1 to Fisk (hereinafter “Fisk”). Specifically, it is stated that “the provided helmet 12, windshield 14 and operating mechanisms as at 16, 18 equivalent to the means for automatically adjusting a position of the windshield.” Also within the Office Action, it is noted that Fisk discloses “the receiver and filter circuit as at 74 receiving signals from a device on a motorcycle and performing a Boolean operation on the signals, and the control circuit as at motor 96.” The Applicant respectfully traverses this rejection. Several of the Applicant’s arguments turn on the difference between *automatic* and *manual*. The Applicant believes these terms to be in some sense antonyms (i.e. opposites) If the Examiner’s construction of the terms differs on this point, the Applicant would appreciate an explanation of that construction.

Claims 1-6

Within the Office Action, Claim 1 is rejected because “the provided helmet 12, windshield 14, and operating mechanism as at 16, 18 [are] equivalent to the means for automatically adjusting a position of the windshield as claimed.”

The cited portion of Fisk discloses a helmet including a motor, a visor, and means for communicating from a *manual* actuator mounted on the handlebar of the motorcycle to the motor to move the visor between open and closed positions. The text of Claim 1 is recited above. A significant difference between the teaching of Fisk, and that of the instant invention, is that the instant invention teaches a device that closes the visor *automatically*, i.e. without *manual* intervention, when the speed of the vehicle crosses a predetermined threshold value.

The Examiner attempts to overcome this difference by asserting that the “operating mechanism” of Fisk (presumably the motor and communication means) is inherently capable of functioning relative to the speed of a vehicle as it can respond to a transmitted signal. This argument is at odds with traditional notions of inherency, and gives short shrift to the functional limitations of Claim 1. Functional language limits a claim by what it does, as described in MPEP §2173.05(g). Inherency refers to implicit or unappreciated properties of the prior art, as described in MPEP §2112. In no sense is the automatic control of a visor in response to non-manual stimuli inherent in a disclosure of a visor controlled in response to manual stimuli. Since there is no

provision for or suggestion of *automatic* control of the windshield in Fisk, Fisk does not teach or suggest the full limitation “means for automatically adjusting a position of the windshield.” For at least this reason, Fisk does not make Claim 1 obvious, and this should be allowed.

Claims 2-6 are dependent from Claim 1. As described above, Claim 1 is allowable over the teachings of Fisk. Thus, Claims 2-6 are allowable as being dependent from an allowed claim.

Claims 7-9

Within the Office Action, Claim 7 is rejected because “the provided helmet 12, windshield 14, and operating mechanism as at 16, 18 [are] equivalent to the means for automatically adjusting a position of the windshield as claimed.”

The cited portion of Fisk discloses a helmet including a motor, a visor, and means for communicating from a *manual* actuator mounted on the handlebar of the motorcycle to the motor to move the visor between open and closed positions. The text of Claim 7 is recited above. A significant difference between the teaching of Fisk, and that of the instant invention, is that the instant invention teaches a device that closes the visor *automatically*, i.e. without *manual* intervention, when the speed of the vehicle crosses a predetermined threshold value.

The Examiner attempts to overcome this difference by asserting that the “operating mechanism” of Fisk (presumably the motor and communication means) is inherently capable of functioning relative to the speed of a vehicle as it can respond to a transmitted signal. This argument is at odds with traditional notions of inherency, and gives short shrift to the functional limitations of Claim 7. Functional language limits a claim by what it does, as described in MPEP §2173.05(g). Inherency refers to implicit or unappreciated properties of the prior art, as described in MPEP §2112. In no sense is the automatic control of a visor in response to non-manual stimuli inherent in a disclosure of a visor controlled in response to manual stimuli. Since there is no provision for or suggestion of *automatic* control of the windshield in Fisk, Fisk does not teach or suggest the full limitation “means for automatically adjusting a position of the windshield.” For at least this reason, Fisk does not make Claim 7 obvious, and this should be allowed.

Claims 8 and 9 are dependent from Claim 7. As described above, Claim 1 is allowable over the teachings of Fisk. Thus, Claims 8 and 9 are allowable as being dependent from an allowed claim.

Claim 10, 12, and 13

As currently amended, Claim 10 recites “a receiver and filter circuit coupled to a motorcycle helmet having a windshield configured to receive electromagnetic signals generated by a spark plug of a motorcycle.” Due to this amendment, the arguments underlying the rejection of Claim 10 are moot. Though, since this amendment incorporates the limitations of Claim 11, the Applicants will address the rejection of that claim.

The Office Action includes a notion that “the source of the signals [received by the receiver and filter circuit] is not seen to set forth any structure of the control system not found in the control system of Fisk.” Again this rejection overreaches the bounds of interpretation placed on functional language. The cited portion of Fisk makes no teaching of a receiver configured to receive signals from a spark plug or other inherent source found within a motor vehicle. Instead, the apparatus of Fisk relies on its own manually actuated transmitter to produce signals for reception by the receiver. For at least this reason, Fisk does not anticipate Claim 10, which should be allowed.

Claims 12 and 13 are dependent from Claim 10. As described above, Claim 10 is allowable over the teachings of Fisk. Thus, Claims 12 and 13 are allowable as being dependent from an allowed claim.

Claim 14

Within the Office Action, Claim 14 is rejected because “the provided helmet 12, windshield 14, and operating mechanism as at 16, 18 [are] equivalent to the means for automatically adjusting a position of the windshield as claimed.”

The cited portion of Fisk discloses a helmet including a motor, a visor, and means for communicating from a *manual* actuator mounted on the handlebar of the motorcycle to the motor to move the visor between open and closed positions. The text of Claim 14 is recited above. An obvious difference between the teaching of Fisk, and that of the instant invention, is that the instant invention teaches a device that closes the visor *automatically*, i.e. without *manual* intervention, when the speed of the vehicle crosses a predetermined threshold value.

The Examiner attempts to overcome this difference by asserting that the “operating mechanism” of Fisk (presumably the motor and communication means) is inherently capable of functioning relative to the speed of a vehicle as it can respond to a transmitted signal. This argument is at odds with traditional notions of inherency, and gives short shrift to the functional limitations of Claim 14. Functional language limits a claim by what it does, as described in MPEP §2173.05(g). Inherency refers to implicit or unappreciated properties of the prior art, as described in MPEP §2112. In no sense is the automatic control of a visor in response to non-manual stimuli inherent in a disclosure of a visor controlled in response to manual stimuli. Since there is no provision for or suggestion of *automatic* control of the windshield in Fisk, Fisk does not teach or suggest the full limitation “means for automatically adjusting a position of the windshield.” For at least this reason, Fisk does not make Claim 14 obvious, and this should be allowed.

Claim 15

As currently amended, Claim 15 recites “a receiver and filter circuit coupled to a

motorcycle helmet having a windshield configured to receive electromagnetic signals generated by a spark plug of a motorcycle.” Due to this amendment, the arguments underlying the rejection of Claim 15 are moot. Though, since this amendment incorporates the limitations similar to those of Claim 11, the Applicants will address the rejection of that claim.

The Office Action includes a notion that “the source of the signals [received by the receiver and filter circuit] is not seen to set forth any structure of the control system not found in the control system of Fisk.” Again this rejection overreaches the bounds of interpretation placed on functional language. The cited portion of Fisk makes no teaching of a receiver configured to receive signals from a spark plug or other inherent source found within a motor vehicle. Instead, the apparatus of Fisk relies on its own manually actuated transmitter to produce signals for reception by the receiver. For at least this reason, Fisk does not make Claim 15 obvious, and thus should be allowed.

Claim 16

New Claim 16 should be allowed because it teaches a combination of limitations that is neither anticipated nor taught by any cited prior art.

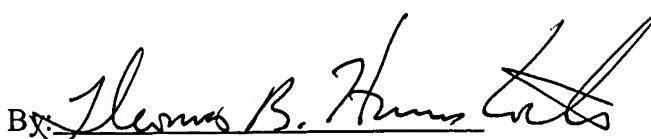
Rejection of Claim 13 under 35 U.S.C. § 103(a)

Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Fisk in view of U.S. Patent No. 6,877,169 to Acquaviva (hereinafter “Acquaviva”). The Applicant respectfully traverses this rejection. Claim 13 depends from the independent Claim 10. As discussed above, the independent Claim 10 is allowable over the teachings of Fisk. Accordingly, Claim 13 is also allowable as being dependent upon an allowable base claim.

For the reasons given above, the Applicant respectfully submits that the pending Claims are in a condition for allowance, and allowance at an early date would be appreciated. If the Examiner has any questions or comments, he is encouraged to call the undersigned at (408) 530-9700 so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,
HAVERSTOCK & OWENS LLP

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By: 

Thomas B. Haverstock
Reg. No. 32,571